

# FLASHBOOK

## TERMS & CONDITIONS

These Terms & Conditions ("Terms & Conditions") govern the engagement of the Client ("you") and Flashbooks to provide any Goods and / or Services ("Goods", "Work", "Services") as well as access to and use of the Flashbooks website (the "Site") and any information, text, graphics, or other materials appearing on the Site (the "Content") or that remain the property of Flashbooks as outlined in the following Terms & Conditions.

Your access to and use of the Site, Content, and/or Services are expressly conditioned on your compliance with these Terms & Conditions. By accessing or using the Site, Content or Services, you agree to be bound by these Terms & Conditions.

### Definitions

"Flashbooks" means any person acting on behalf of and with the authority of the business trading as Flashbooks Pty. Ltd.  
– ABN 80 140 186 803

"You" means the client who shall be liable for all payments for Work, Goods or Services rendered and shall hold the authority to approve any Quotation, Approval or other documentation required for the continuation of the Work.

"Goods" includes but is not restricted to hardware and software, data files and other related material.

"Services" includes but is not restricted to, supplying quotations, concept design, layouts, drawings & sketches, research, site visitation, web design, copywriting, coding, consultations and referrals.

### Modification of Terms & Conditions

You acknowledge and agree that Flashbooks may revise these Terms & Conditions from time to time. By continuing to access or use the Site, Content or Services after Flashbooks makes any such revision, you agree to be bound by the revised Terms & Conditions.

### Privacy

Please see the Flashbooks Privacy Policy for information and notices concerning Flashbooks' collection and use of your personal information.

### Work Schedule

Flashbooks shall use commercially reasonable efforts to ensure the Work is carried out in a timely fashion and in accordance with any timeframe outlined within the Quotation. Such timeframes are indications only however and should not be accepted explicitly or as a guarantee of delivery. Flashbooks shall not be held responsible for any losses incurred from the failure to meet such timeframes, as outlined within the quote or any other documentation.

You understand that delays on your part or that of suppliers may delay performance of Flashbooks' duties, and Flashbooks' time to perform shall be extended if such delays occur. In addition, if either party hereto is unable to perform any of its obligations hereunder by reason of fire or other casualty, strike, act or order of a public authority, act of God, or other cause beyond the control of such party, then such party shall be excused from such performance during the duress of such cause.

### Quotations

Any Scope of Work, Written Proposal, Quotation or outline of Fees for Work undertaken by Flashbooks remains the property of Flashbooks. The contents of such documentation shall not be disclosed to any third parties and shall not be used for the commercial benefit of any party other than Flashbooks.

Unless otherwise stated, all quotes are in accordance with the pricing outlined within the [flashbook.com.au](http://flashbook.com.au) site. Should the proposal or brief change due to additional services being required or variations in production costs, a new quote will be issued in accordance with the additional expenses.

Any expense incurred that is necessary in the completion of the Work, such as production costs, stock photography and other associated costs, may be subject to change and Flashbooks reserves the right to alter such costs when necessary.

In the case of exchange rate calculations, a currency conversion will be calculated at time of purchase and shall be charged as "actual cost to Flashbooks". If a quote is to be issued to an overseas party for Work then Flashbooks reserves the right to establish a Fee based on a fixed rate of exchange at time of quotation in order to alleviate any fluctuation in derived income from the Work provided.

Items of Work may be listed and costed separately within the quote however the removal or addition of items may not constitute a direct change in pricing and may affect the costing of other items. Should items require revision, a new quote will be issued in accordance with the Scope of Work.

### Brief

The Brief provided by Flashbooks and completed by you will be the primary source of information when carrying out the Work. Those aspects outlined within the Brief will determine the quote and as such should include instructions regarding functionality, design, required performance and copywriting required to complete the Work satisfactorily. Flashbooks reserves the right to amend and re-issue quotations or proposed fees should there be a deviation from the original Brief once issued. Flashbooks shall not be held responsible for a failure to carry out Work not outlined within the Brief and reserves the right to decline additional Work not outlined in the original Brief.

### Flashbooks Creation, Hosting & Maintenance

Where the Work involves uploading your Flashbooks to a website you have provided us the URL for, including your FTP username and

# FLASHBOOK

password and hosting provider details, Flashbooks agrees to upload your final approved Work to your preferred URL subject to the "Payment" clause outlined herein. Flashbooks is not responsible for any delays, data loss or malfunction caused by the hosting provider however we will ensure that the site be free of any technical errors associated with the Work – functionality, design, data – for a period of three (3) months from date of completion, provided there has been no interference from third parties or you have not, either directly or indirectly, caused the error yourself.

Where the Work involves uploading your Flashbooks to the Flashbooks site, you may only use the Site, Services or Content subject to the restrictions set forth in these Terms & Conditions. Furthermore, the Site and Content made available through the Site may contain links to other websites that are completely independent of Flashbooks. Flashbooks makes no representation or warranty as to the accuracy, completeness or authenticity of the information contained on such websites. Under no circumstances will Flashbooks be liable in any way for any Content or for any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, linked or otherwise made available via the Site. You are also fully responsible for any Content you post on the Site and to the consequences of any such Content.

Flashbooks will not be responsible for any training of software unless otherwise noted within the quote. Should any alterations be required with regard to the finished site – re-design, content changes, image alterations, corrections of errors caused by you or third parties, inclusions or exclusions of any kind not already present within the finished site – these items will be considered Maintenance and will be billed according to the "Payment" clause outlined herein.

## Registration and Passwords

Some Services or areas of the Site may require you to register as a Client or user. If you choose to register, you must submit a valid e-mail address and select a username and password during the registration process. You are responsible for safeguarding the password that you use to access any secure areas of the Site. You agree not to disclose your password to any third party. You agree to take sole responsibility for any activities or actions under your password, whether or not you have authorized such activities or actions. You will immediately notify Flashbooks of any unauthorized use of your password. Flashbooks reserves the right to refuse providing Services or access to the Site to any user, or to delete accounts created by users who appropriate the name, likeness, email address or other personally identifiable information of another individual.

## Payment

You agree to pay Flashbooks on the following basis:

Flat fee in installments - The payment shall start with a deposit of 50% of the balance thereto. The remaining 50% balance shall be paid by you upon final approval: that the requirements of the contract as outlined in the quote have been satisfied, the Flashbooks Project Sign-Off Form has been completed and that the Flashbook is in sound working order.

Payment will be required before any commencement of work is to begin. Payment being made on final installment will be required immediately from date of invoice subject to the above approval conditions and payment will be required according to the conditions below.

Unless prior arrangements are made with Flashbooks in writing, payment ("Fee") will be required on the fifth (5<sup>th</sup>) day of the following month from date of invoice. You will have fourteen (14) days within which to pay the invoice otherwise Flashbooks reserves the right to charge late payment fees of one percent (1%) calculated and accumulated daily. These Fees shall be issued separately once the initial invoice has been settled and you will be required to pay immediately. Should you fail to pay these late payment fees on issue the charges will continue to accumulate in accordance with the one percent (1%) accrual based on the initial invoice.

Until all payments have been made in full and all contractual agreements satisfied all Work shall remain the property of Flashbooks.

Work shall only be taken "live" and made available to you once full payment has been made, all contractual agreements have been satisfied and in the case of external hosting, your hosting provider and domain name registration has been paid in full.

Payment may be made to Flashbooks in the form of cheque, bank cheque, credit card payment, cash or direct deposit. However, until such funds have been cleared and honoured payment will be considered to remain outstanding and all Work shall remain the property of Flashbooks.

Where the transaction of Goods & Services rendered is outside of Australia, full payment will be required within sixty (60) days from the date of invoice. If full payment is not made, in addition to accruing penalties up to that point, an additional 10% of project costs will be incurred in order to compensate for the GST component incurred by the Australian government.

Should partial payment be required for the project in question and the account is in arrears, work on the project will cease until payment has been made unless alternative arrangements have been made with Flashbooks. Cessation of Work in progress does not constitute reason or failure on your part to settle the account in question.

Should you fail to pay any account in arrears Flashbooks is indemnified from any and all legal and debt collection agency costs involved in procuring the overdue amount.

If you are a Pty. Ltd. Company or liability of the company falls with a Trust, the Directors or Trustee of the Trust agree to personally guarantee the debts of the Company or Trust.

If Flashbooks is held as liable for any defects of Work carried out or supply of Goods, liability will only extend as far as replacing or repairing the Goods or Service.

# FLASHBOOK

## **Goods and Delivery**

At the sole discretion of Flashbooks, "Delivery of the Goods" shall include, but not be excluded to; transfer or delivery of files, Flashbooks taking possession of Goods at a nominated address by you, your taking possession of the Goods at an address nominated by Flashbooks.

Any expense involved in the Delivery of Goods in accordance with the aforementioned articles will remain your responsibility and Flashbooks shall charge accordingly as an additional expense. Flashbooks shall not be held responsible for the loss or damage of any such articles in the transfer of such Goods.

Within five (5) days of the delivery of such Goods it is agreed that you shall inspect the Goods to be free from any defects, shortage in quantity or damage. Should no reasonable notice be given to Flashbooks within the five (5) days then the Goods will be presumed to be free from any defect.

Should the Goods be considered to be defective by you, Flashbooks will be allowed the opportunity to inspect the Goods within a reasonable timeframe following Delivery of the Goods. Should Flashbooks agree in writing that the Goods are defective and are free from any tampering or fair wear and tear, Flashbooks will be limited to replacing or repairing the Goods in question and will not be liable for any loss or damage incurred from the failure of the Client to procure the Goods.

Until payment is made in full for the Goods you shall keep the Goods separate and identifiable and upon written notice from Flashbooks shall return the Goods on request to a nominated address upon which all ownership of the Goods by the Client shall cease.

Should you procure the Goods and full payment has not been made, Flashbooks has the right to enter the Client's premises, whether owned or occupied, and take possession of the Goods.

Until full payment is made, any proceeds from the sale of the Goods or any service or product derived from the use of the Goods shall remain the property of Flashbooks and shall be delivered intact and in original condition to Flashbooks at their immediate request.

## **Limitation of Liability**

While Flashbooks makes all reasonable commercial efforts to ensure its work is without fault, it remains your responsibility to check all work for defects and faults prior to signed approval. Flashbooks assumes no responsibility for any loss, damage or additional expense arising from changes made to approved Work and any such costs will be charged accordingly in addition to the initial quote.

Any breach of this contract allows Flashbooks the right to suspend or terminate any contractual agreement existing with you including the supply of Goods to you. Should any loss or damages be born by Flashbooks as a result you agree to fully indemnify Flashbooks for all associated and consequential costs arising out of breach of contract.

Any use of the Flashbooks website holds neither Flashbooks nor any other party involved in creating, producing, or delivering the site, content or services liable for any incidental, special, consequential or punitive damages resulting from your access to or use of, or inability to access or use, the site, content or services whether based on warranty, contract, tort or any other legal theory, whether or not Flashbooks has been informed of the possibility of such damage, even if a remedy set forth herein is found to have failed of its essential purpose. You acknowledge that Flashbooks is not liable for the defamatory, offensive or illegal conduct of other users or third parties and that the risk of injury from the forgoing rests entirely with you. Further, Flashbooks will have no liability to you or to any third party for any third party content uploaded onto or downloaded from the site or through the services.

Should you supply Flashbooks with property or items owned either by you or a third party with a total combined value of over \$100, all risk and responsibility lies with you, including insurance, unless otherwise stated in writing.

Should you or the company you represent change ownership, name or address you agree to give Flashbooks seven (7) days notice in writing and you shall be liable for any loss incurred from such change.

## **Revisions**

All work will be given an allowance for two creative changes after the initial draft has been issued in accordance with the brief. Any amendments to Work after this time, including additional content or image submissions will incur additional charges to the Fee already quoted upon.

## **Client Responsibilities**

You shall co-operate throughout the Work by promptly providing Flashbooks with necessary information in a format requested by us; arranging any interviews that may be needed; giving prompt attention to documents to review and requested approvals; facilitating communications between Flashbooks and other professionals, with whom you have retained. If you provide specifications or related information this shall be at your expense, and Flashbooks shall be held harmless for relying on the accuracy of what you have provided. If at any time you have knowledge of a deviation from specifications or other problems with the Work, you shall promptly give notice in writing to Flashbooks.

## **Approvals By Client**

On Flashbooks' request, you shall approve any plans, drawings, renderings, layouts, and similar documents by returning a signed copy ("Approval") of each such document or a signed authorisation referencing such documents to Flashbooks.

## **Assignment Of Work**

Flashbooks reserves the right to assign other designers or subcontractors to the Work to ensure quality and on-time completion.

# FLASHBOOK

## Permissions and Releases

You agree to indemnify and hold Flashbooks harmless against any and all claims, costs, and expenses, including solicitor's fees, due to materials included in the Work at your request for which no copyright permission or previous release was requested or uses which exceed the uses allowed pursuant to a permission or release.

## Ownership

Flashbooks' ownership shall include any copyrights, trademarks, patents, or other proprietary rights related to the Flashbooks design. Except as expressly permitted in these Terms & Conditions, you may not reproduce, modify or prepare derivative works based upon, distribute, sell, transfer, publicly display, publicly perform, transmit, or otherwise use the designs of Flashbooks or our website's content or services. You may not copy or modify the code used to generate web pages on the Flashbooks website. You may not use the aforementioned sites content or services on or in connection with any other website, for any purpose.

Flashbooks may freely use, without compensation to you, any concepts, ideas, know-how or techniques contained in any communication you send or feedback you provide to Flashbooks.

## Publicity

Flashbooks shall have the right to document the Work in progress and when completed, by photography or other means, which Flashbooks may use for portfolio, brochure, public display, and similar publicity purposes. Your name and the location of the Work may be used in connection with the documentation, unless specified in writing beforehand. If Flashbooks chooses to document the Work, Flashbooks shall pay the costs of documentation. In addition, if you document the Work, Flashbooks shall be given credit as the designer for the Work if your documentation is released to the public. You will not use the name of Flashbooks, in any advertising or publicity without prior written approval from Flashbooks.

## Indemnity

You agree to defend, indemnify, and hold harmless Flashbooks, its directors, employees, contractors and agents, from and against any claims, liabilities, damages, losses, and expenses, including, without limitation, legal and accounting fees, arising out of or in any way connected with your access to or use of the Site, Content or Services, or your violation of these Terms & Conditions.

## Severability

In the event that any provision within these Terms & Conditions are held null and void or without jurisdiction, those remaining conditions outlined within the Terms & Conditions shall remain intact and enforceable.

## Reservation Of Rights

All rights not expressly granted hereunder are reserved for Flashbooks, including but not limited to all rights in sketches, layouts, images or other preliminary materials.

## Waiver

The failure of Flashbooks to enforce any right or provision of these Terms & Conditions will not be deemed a waiver of such right or provision.

## Controlling Law and Jurisdiction

These Terms & Conditions and any action related thereto will be governed by the laws of New South Wales. The exclusive jurisdiction and venue of any action with respect to the subject matter of these Terms & Conditions will be the state and federal courts located in Sydney, New South Wales, and each of the parties hereto waives any objection to jurisdiction and venue in such courts.

## Termination

Flashbooks reserves the right to terminate its services in regard to any Work upon the provision of thirty (30) days written notice and shall not be liable for any loss or damage incurred by either party upon such termination.

You shall be deemed to have terminated Work with the Designer should you provide signed documentation of your desire to cease Work, of which thirty (30) days written notice is also required prior to such termination.

You shall be deemed to have terminated Work with Flashbooks should you breach these Terms & Conditions or any separate contractual agreement, are unable to supply the documentation required by Flashbooks, go into voluntary or involuntary liquidation, are declared insolvent in bankruptcy or other legal proceedings or have a receiver appointed to whole or part of your business.

## Payment Upon Termination

In the event of termination, you shall pay any expenses incurred by Flashbooks for work completed through the date of that request, while reserving all rights under this Agreement. Flashbooks shall own all rights to the Work. You shall assume responsibility for all collection of legal fees necessitated by default in payment. If additional payment is due, this shall be payable immediately upon the issuing parties written notification to stop work.